

MEMO ENDORSED

BURKE, MIELE & GOLDEN, LLP

PATRICK T. BURKE
ROBERT M. MIELE *
RICHARD B. GOLDEN
MICHAEL K. BURKE

KELLY M. NAUGHTON**
JENNIFER S. ECHEVARRIA***
PHYLLIS A. INGRAM****
ASHLEY N. TORRE

JOSEPH P. MCGLINN (1941-2000)

* ADMITTED IN NEW YORK & NEW JERSEY
** ADMITTED IN NEW YORK & MASSACHUSETTS
*** ADMITTED IN NEW YORK, NEW JERSEY & CONNECTICUT
**** ADMITTED IN NEW YORK & CONNECTICUT

40 MATTHEWS STREET
SUITE 209
POST OFFICE BOX 216
GOSHEN, N.Y. 10924
(845) 294-4080

Fax (845) 294-7673

USDC SDNY	ROCKLAND COUNTY OFFICE:
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ELECTRONICALLY FILED	NEW CITY NY 10956
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DATE FILED: 9/4/2013	

September 3, 2013

Hon. Cathy Seibel
United States District Court
for the Southern District of New York
The Hon. Charles L. Brieant, Jr. Federal
Building and United States Courthouse
300 Quarropas Street - Room 218
White Plains, New York 10601-4150

Via Fax - 914-390-4278 - 6 pgs.
and Regular Mail

Re: Bozella v. County of Dutchess, et al
No. 10 Civ. 4917 (S.D.N.Y.)

Application Granted / Denied No further
So Ordered. extensions

Cathy Seibel
Cathy Seibel, U.S.D.J.

Dated: 9/3/13

Dear Judge Seibel,

I wrote to request a two week extension of time from Friday, August 30, 2013 to Friday, September 13, 2013 to file Dutchess County's opposition papers to the plaintiff's Motion for Partial Summary Judgment and both defendants' moving papers in support of their motion for summary judgment.

Last Friday, the due date for serving our motion papers, we were working hard to get them placed in the mail to plaintiff's counsel before midnight. By 8:00 p.m., I realized that it would be physically impossible for us to do so. Because it was late on the Friday evening before a holiday weekend, I did not try to reach plaintiff's counsel by phone. Nor did I contact the Court because I did not anticipate that anyone would be available to accept my call. I therefore sent an e-mail message to plaintiff's counsel seeking their consent to this two week adjournment. A copy of my e-mail message of Friday evening is attached.

Today we received an e-mail response from Peter Macdonald. Mr. Macdonald noted that he was responding to my letter of 7:59 p.m. on Friday, August 30th asking for "second two-week extension to file defendant's opposition to Mr. Bozella's motion for summary judgment and defendants' cross-motion for summary judgment." For reasons expressed in his letter to me today, Mr. Macdonald objected to our request. I enclose a copy of Mr. Macdonald's e-mail letter to me.

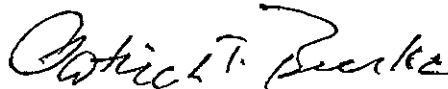
Mr. Macdonald referred in his letter to me to a "second two-week extension". He is correct. The reasons behind the first request for an extension are purely personal. They are set forth in my July 31, 2013 letter to Mr. Macdonald, a copy of which I also enclose. We appreciate and have thanked plaintiff's counsel for their courtesy in consenting to this request.

At the time I made my original request for a filing deadline extension, I had every expectation and, indeed, desire to fulfill our duties by that date. The pendency of these motions is a major burden on us, a burden which shall not be relieved until we have filed our motion papers. We are working earnestly to do so properly. Solely, however, to adequately represent our clients, I need a two week extension.

If granted, our papers will be required to be served by Friday, September 13, 2013. The plaintiff's answering/reply papers will be due on November 7, 2013. Our reply brief will be due December 30, 2013. If a motion to strike plaintiff's expert's opinion is made, that shall also be filed on December 30, 2013. All papers are to be filed by December 30, 2013 if no motion is made and by January 29, 2014, if one is.

We respectfully ask for the Court's consent to this adjusted schedule.

Very respectfully,


Patrick T. Burke

PTB:vc

Encs.

c: Peter J. Macdonald, Esq.,
Via e-mail – peter.macdonald@wilmerhale.com and Mail
Ross E. Firsenbaum, Esq.
Via e-mail – ross.firsenbaum@wilmerhale.com and Mail

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**** ADMITTED IN NEW YORK & CONNECTICUT

August 30, 2013

Peter J. Macdonald, Esq.
Wilmer Hale
7 World Trade Center
New York, New York 10007

peter.macdonald@wilmerhale.com

Ross Firszenbaum, Esq.
Wilmer Hale
7 World Trade Center
New York, New York 10007

ross.firszenbaum@wilmerhale.com

Re: **Bozella v. City of Poughkeepsie, et al**
Docket No: **10 CV 4917 (CS)**

Dear Peter and Ross,

I write at this late hour before a holiday weekend to ask, again, for your indulgence.

Try as we have we find that we cannot get our motion papers to you by the end of the day. Even we were to keep at it until midnight we could not meet the deadline for doing so.

We need an additional two weeks or until September 13th. If that is acceptable to you will notify the Court on Tuesday. If not, we will seek permission from the Court to file our papers two weeks from today. All other scheduled dates will be adjusted accordingly so that we would not be intruding upon any of your time constraints.

Thank you for your previous courtesies. I hope you are having an enjoyable Labor Day weekend.

Very truly yours,


Patrick T. Burke

PTB:vc

WILMERHALE

Peter J. Macdonald

+1 212 937 7223 (f)
+1 212 230 8888 (f)
peter.macdonald@wilmerhale.com

September 3, 2013

VIA EMAIL AND U.S. MAIL

Patrick T. Burke, Esq.
Burke, Miele & Golden LLP
40 Matthews Street, Suite 209
P.O. Box 216
Goshen, NY 10924

Re: *Bozella v. County of Dutchess, et al.*, No. 10 Civ. 4917 (S.D.N.Y.)

Dear Pat:

I write to respond to your letter of 7:59 p.m. on Friday, August 30, 2013 asking for a second two-week extension to file Defendants' opposition to Mr. Bozella's motion for partial summary judgment and Defendants' cross-motion for summary judgment. This request came, without any explanation, on the night both sets of papers were due under the Court's scheduling order.

Defendants have had more than four months since expert discovery closed and more than eight months since the final deposition of a fact witness to prepare their summary judgment motion. We previously proposed a schedule that would avoid overlapping briefing, but your firm rejected our offer, claiming that Defendants did "not believe that such a submission of motions will serve to simplify either the schedule or the issues presented for the Court." See April 5, 2013 email from Ms. Ingram to Mr. Firsenbaum.

Moreover, Defendants have repeatedly sought to delay proceedings, going back to when the Dutchess County Court reprimanded the Dutchess County District Attorney's office for a "tortured history of postponements" and "ignored contacts" by the Court's law clerk. See Tr. of Dep. of Edward Whitesell, Ex. 4. This has continued in this case, as Defendants have ignored deadlines during the pleading, discovery, and now summary judgment stages, and sought and obtained numerous extensions of deadlines, including extending the scheduling order multiple times. The prior deadline for Defendants to file their opposition and cross-summary judgment motion papers was August 14, 2013. Thereafter, Defendants sought to defer that deadline to August 30, 2013 (something we agreed to as a matter of courtesy). Under the circumstances, however, we cannot agree to further extensions. Given the failure by your clients to comply with the scheduling order established (upon your clients' consent) by the Court, the Defendants have waived the right to file any opposition papers, and to move for summary judgment at this late stage. See, e.g., *Yaohua Deng v. Compass Group USA Inc.*, 481 Fed. App'x 28, 29 (2d Cir. 2012) (affirming summary judgment and denial of Rule 60(b) motion where plaintiff failed to

WILMERHALE

Patrick T. Burke, Esq.
September 3, 2013
Page 2

request extension of time to respond to summary judgment motion prior to deadline to file opposition brief); *Canfield v. Van Atta Buick/GMC Truck, Inc.*, 127 F.3d 248, 250-51 (2d Cir. 1997) (affirming dismissal where plaintiff failed to respond to defendant's motion for summary judgment by unambiguous court-ordered deadline); *see also RLI Ins. Co. v. JDJ Marine Inc.*, 716 F.3d 41, 44 (2d Cir. 2013) (denying motion to extend deadline to file appellant's brief after appellant had already received one extension and requested second extension three days before the brief was due).

Very truly yours,



Peter J. Macdonald

July 31, 2013

Ross Firszenbaum, Esq.
Wilmer Hale
7 World Trade Center
250 Greenwich Street
New York, New York 10007

via e-mail
ross.firszenbaum@wilmerhale.com

Re: Bozella v. City of Poughkeepsie, et al
Docket No: 10 CV 4917 (CS)

Dear Ross,

I had called you earlier today to discuss with you our desire to push back the dates of our motion schedule. I obviously must pose this request to Judge Siebel and I was hoping to be able to tell her that you consented to it.

The reasons for our request are personal. Both Mike and I are scheduled to take a short vacation to the Jersey shore to visit with two other of my sons and their families. Coordinating the schedules of four families (mine and those of my sons) took some juggling. It turns out that the only time we can all get together is next week.

Also, on August 8th, a week from tomorrow, there will be a memorial service at West Point for my wife's nephew (and our children's cousin) Thomas Kennedy, an Army Major who was killed last year in Afghanistan. The extended Kennedy family and many of Tommy's friends and colleagues will be there. We will, of course, be attending.

Thus, I seek your consent to an adjournment of all motion dates. We would like to submit our initial papers on August 30th, a bit more than two weeks beyond the originally scheduled date. All of the succeeding dates would be adjusted accordingly.

I seek your consent. Please let me know. Thank you.

Very truly yours,

Patrick T. Burke

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July 31, 2013

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Wilmer Hale
7 World Trade Center
250 Greenwich Street
New York, New York 10007

via e-mail
ross.firszenbaum@wilmerhale.com

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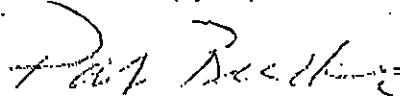
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